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Some Remarks upon, and Instances of the Usages of former Parliaments, in relation to Taxes.

I Shall not take upon me, to give any directions of my own; but only lay before my Country-men, some few Observations on the proceedings of former Parliaments, which preserv'd Old *England* by its self, against the Attempts of all her Enemies, tho' *Scotland* was not then united to her. And how far Precedents are useful, how far the usuage of Parliaments goes towards making the Laws of Parliament, I shall leave others to judge.

In Ancient times, when *England* was happy at home, and powerful abroad, the Parliaments were always very careful how they introduc'd new precedents in Taxes; having respect as well to the duration, as to the nature of them; and the end and purpose on which they were to be employed. And besides all that, they took care to have, for their Money, new, good, and wholsome Laws enacted, and Grievances redess'd. That which made them fearful of new precedents, is what my Lord *Cooke* observes. When any ancient Law or Custom of Parliament is broken, and the Crown possess'd of a precedent, 'tis a very difficult thing to restore the Subject to his former freedom and safety. For that reason Taxes in old times were granted, only *pro hac vice*, or for two or three Years at the most, as my Lord *Cooke* shews you in his fourth *Institutes*. And some notice is likewise taken of it, in the second *Institutes*. Where he tells us, That in the 3*d* of *H.* 5. the subsidy of Tonnage and Poundage was granted to that King during his Life, in respect of the recovery of his Right in *France*, which was the first grant, for Life, of that kind: yet therein was a proviso; that it should not be a precedent, for the like to be done to any Kings afterwards. But yet all the Kings after him had it for Life. So forceable is once a precedent fixed in the Crown, add what proviso you will.

2 *Inst.* 529.

4 *Inst.* 32.
2 *Inst.* 61.

As for the nature of the Taxes, pray obſerve what my Lord *Cooke* cites out of the Parliament Rolls. At a Parliament in 9 *E.* 3. when a motion was made for a Subſidy to be granted of a new kind, the Commons anſwered, that *They would have conference with thoſe of their ſeveral Countries and Places, who had put them in Truſt, before they treated of any ſuch matter.* To which let me crave leave, to add an other Parliament Roll, in the ſame King's time. An aid being deſired of the Commons, the tenth part of their Corn, Wool, and Lambs, for two Years. The Commons anſwer is, That they conſider'd the neceſſity of affairs, and were very ready to aid the King: *Becauſe he had gone ſo far in the buſineſs he had undertaken, for his own Honour, and good of the People*; and prayed God to continue his Victories, *&c.* And as to the neceſſity of an aid, they are well appriz'd of it, and are very ready, as they always were, to aid the King; but they dare not aſſent to that aid, *until they had taken Counſel and Advice of the People, whom they repreſented*; and therefore prayed the King, that he would *call another Parliament*, and let them go into the Country, which was accordingly done. And 'tis to this Record that my Lord *Cooke* refers, when he ſays, It is the Law and Cuſtom of Parliament: That when any new device is moved, on the King's behalf, in Parliament, for his aid or the like, the Commons may anſwer, that they tender the King's Eſtate, and are ready to aid the ſame, only in this new device, they dare not agree, *without Conference with their Countries.* Whereby it appeareth, that ſuch Conference is warrantable by the Law and Cuſtom of Parliament. And the ſame great Author does afterwards ſhew you, that Subſidies fram'd in *new Molds*, uſually raiſe great diſcontentments, and diſturbances, and doth inſtance in ſeveral Rebellions that were thereby cauſed: which ſeldom ended, but *in the deaths of the Contrivers, Promoters, or Managers of thoſe wicked Projects.* Tho' beſides the novelty of the Taxes on comparing the Rolls of Parliament with the Hiſtories of thoſe times, an other cauſe, of ſome of thoſe Inſurrections, may be gueſs'd at. The Tax was given, for *carrying on a War in Forreign parts*: Which brings me to the Statute, call'd *Confirmationes Chartar*; which enacts that Aids, and Taxes, that had been granted to the King, for *carrying on his War beyond the Seas*, ſhould not be taken for a Cuſtom. My Lord *Cooke* in his Comment on that Statute, has theſe words. The King had obtained, by free conſent, and good will in Parliaments precedent, Aids, Subſidies, and Tasks, for the maintenance of his War in forreign parts; which howſoever they were granted, in full Parliament: yet, as here it appeareth, many men doubted, might turn in *ſervage of the Subjects of the Realm*; for that it was holden, that they ought not to contribute, *to the King's*

War

2 Inſt. 34. *Rot. Parl.* 9 *E.* 3. *n.* 5.

Rot. Parl. 13 *E.* 3. *n.* 4. and 9.

Note there was ſome encouragement.

4 *Inſt.* 14.

Note the Law of Parliament

4 *Inſt.* 33. *and* 34.

35 *E.* 1. *c.* 5.

2 *Inſt.* 5. 28.

Wars, out of the Realm. And thereupon, *Bohun* Earl of *Hereford* and *Eſſex*, high Conſtable of *England*; And *Bigot* Earl of *Norfolk* and *Suffolk*, and Marſhall of *England*, for that it concern'd matters of Arms, and War, exhibited a Petition, to the King, in *French*, in *Anno* 25 *E.* 1. before the making of this Act, which I have ſeen anciently recorded, on behalf of the Commons of *England*, concerning the ſaid matter, and thereupon, the King at this Parliament, yielded to this Act, that ſuch Aids, Tasks or Takings, ſhould not be drawn to Cuſtom, for any thing that had been done on that behalf. But my Lord *Cooke* farther adds, That this matter was never in quiet, until it was more particularly explain'd, by divers Acts of Parliament, which he there draws into one body of a Law, divided into ſeveral Branches, and then ſubjoyns. Which *Acts of Parliament are but declaratory of the ancient Law of England.* And according to this ancient Law, the Commons after the ſame *declaratory* Acts of Parliament, when this point, concerning maintenance of Wars, out of *England*, came in queſtion, make their continual Claim of their ancient Freedom and Birthright, as in 1 *H.* 5. and 7 *H.* 5. the Commons made proteſtations, that they were not bound to the Maintenance of Wars, in *Scotland*, *Ireland*, *Calice*, *France*, *Normandy*, or other foreign parts, and cauſed their Proteſtations to be entred, into the Parliament Rolls, where they yet remain. Tho' it muſt be known, that *Ireland* then was, as now it is, a ſubordinate Realm, and a Member of the Imperial Crown of *England*. And 'twas held for Law. That the King of *England*, *jure Coronæ ſuæ*, was chief Lord of *Scotland*. And the King of *Scotland* had, before that time, for an offence, been amerc'd in *England*. And the purview of the before mention'd Statute, 7 *H.* 5. ſays, That they gave the Tax for the ſpecial defence of the Realm of *England*. And the Taxes were generally, in former times, thus appropriated. What was raiſed on the Land, was apply'd to our defence at home. And Tonnage and Poundage, and Taxes of that nature, were appointed for the keeping and ſafeguard of the Seas, and for intercourſe of Merchandize ſafely to come into the Realm, and ſafely to paſs out of the ſame: And for that purpoſe ſometimes the Merchants had them, 4 *Inſt.* 146. And in ſome five or ſix King's Reigns (that Juſtice might be the more impartially adminiſtred, between the Soveraign and the People, and the *honeſt* Judges duly paid) part of that Duty was, by Act of Parliament, appropriated, *to the payment of the Judges Salaries*, and that ſo ſecur'd that, tho' the King granted Licence to Perſons for tranſporting their Goods Cuſtom-free; yet for the ſubſidy of theſe very Goods, were the Officers of the Cuſtom-houſe *accountable to the Judges for their Salaries.* But you ſhall not find it expreſs'd in the Rolls of Parliament: nor is it handed down to us

Rot. Par 1 H. 5. 17. 7 H. n. 8. and

C. 1 it 141 Noy. 94. Calv. ca. rep. 22. Latch 23 Davis 25 Year-book 3 H. 7. 10 1 H. 7. 1 P. 7. E. 1. r 5. Serg. Maynard mem. ſca f. 9. 4 Inſt. 3

H. 6. E E. 5. R. H. 7. C

Stat. 1 H. 6. c. Rot. Pa Year bo 1 H. 7. 4.

by any Historians, that I know of, that Taxes were usually (I was going to say ever) given *for maintaining Alliances abroad, or raising Estates for Sycophants at home.* *Confirmationes Chartarum*, c. 5. says, that all Taxes shall be granted by the common consent of the Realm,
2 Inst. 529 and for the common profit of it. And my Lord *Cooke* on that Statute says, 'Tis thereby enacted, that every Aid, Task and Taking, must have two properties, the one in the Creation, *viz.* that it be given by the common consent of the whole Realm in Parliament. The other in the Execution, *viz.* that it be given and imploy'd for the Common Benefit of the whole Realm, and not for private, or
Ergo not foreign Wars. *other* respects, which words, and for the common profit of it, in the impression of *Tottel*, are inuriously omitted, says that learned Author, It seems some cunning Courtier had prevail'd on the Publisher of the Statutes, to suppress that clause, lest it should encounter his private Interest. For there have been often Parasites at Court, who were willing, out of Moneys given for the common profit of the Realm, to have rais'd vast Fortunes to themselves, and done nothing for it, but made Blinds for the Parliament, and contriv'd fine Speeches, for the continuance of such Subsidies and Taxes. But when such things were done, and discover'd, they were soon taken notice of in Parliament, and severely punish'd. As you may find in the
Rot. Parl. 28 *H.* 6. n. 38. & 50. Parliament Rolls. To mention one. *William De la Pool*, Duke of *Suffolk*, was banish'd the King's dominions for five Years, on Articles exhibited against him, by the House of Commons. One of which was, for causing part of the *Subsidies*, granted for the *defence of the Realm*, and *safeguard of the Seas*, to be apply'd to other uses. But these designs were generally prevented or destroyed, by the appropriating clauses before mention'd. But tho' most of our Subsidy Statutes are appropriating, yet I find not any one so exact, and consequently so effectual, as that of the 31 *Car.* 2. for disbanding the *Blackheath* Army, for therein Care is taken that all the Moneys rais'd, by virtue of that Act be paid to the Commissioners therein nam'd; who are to pay it away to the Uses and Purposes therein expres's'd, nor could that Statute be evaded, tho' there were then some crafty men at Court. And that Act went yet further, and by way of proviso, forbad the quartering of Souldiers in Houses, without the Owners consent, which is a very beneficial Law to the Subject. And that way of *tacking* Acts of Parliament together, hath been often
Inst. 27. pract. parl. 4 E. 3. stat. 1. n. 7. &c. practic'd, with very good success. My Lord *Cooke* tells us, that in the Parliament held the 14 *E.* 3. the Ninth part of their Grain, Wool, and Lamb, *&c.* was granted to the King, on conditions that the King would grant their Petitions, in a scedule annext. Which act so pass'd,

and

and the Parliament continued, and divers others Acts were afterwards paſt in that Seſſions. Which ſaid Statute, or the petitioning part of it (as ſeems to me) was not very ſtrictly obſerv'd, and the next Parliament takes notice, and gives their judgment of it. For an Aid being demanded. The Parliament declare, that the plain meaning of the Lords and Commons is, that all things contain'd in the Statute granted for the Ninths, be in all points obſerv'd; or elſe they think themſelves not oblig'd to pay any thing of the 9th, or of any thing elſe, that ſhould be laid on them; and if the King pleaſe to grant the aforeſaid things, together with the Petitions, which the Lords and Commons ſhall now preſent to him, they will then give him a reaſonable anſwer. And afterwards, in the ſame King's Reign, an Aid being requir'd of the Commons, they grant it, but on ſeveral conditions therein expreſs'd; one whereof was, *That the Petitions that were not anſwer'd the laſt Parliament, ſhould be fully anſwered in that Parliament.* So that on the performance of thoſe conditions, depended that Subſidy: for according to the judgment of the Parliament, before cited, *if the Conditions were broken, the Tax ceaſed.* And by ſuch methods as theſe, the Parliament *ſeldom or never loſt a good Bill.* And my Lord *Cooke* tells us. It is an obſervation prov'd, by a great number of Precedents, that never any good Bill was prefer'd, or good motion made in Parliament, whereof any Memorial was made in the Journal Book, or otherwiſe, tho' ſometimes it ſucceeded not at firſt, yet hath it never dyed, but at one time or other hath taken Effect. Which ſays that Author, may be a great encouragement, to worthy and induſtrious attempts. Of which he tells you he there gives ſome few Examples for many, and in the margin has about 30 quotations to that purpoſe And the ſame Author, in his Chapter of the Court of Wards and Liverys, tells you of an attempt in Parliament for the taking away of Wardſhips; which motion, tho' it proceeded not to effect, yet he ſays, he thought good to remember it; hoping that ſo good a motion, tending to the honour and profit of the King, and his Crown; and the freedom, and quiet of his Subjects, and their Poſterities, will ſometime, or other, (by the Grace of God) by Authority of Parliament, one way or other, take effect and be aboliſht. Which long ſince the writing of that Treatiſe, and ſince the Author's death; we have (God be thanked) to the great profit of the Crown, and unſpeakable comfort of the Subject, ſeen effected. Which very much corroborates the former obſervation. And I hope, will be an encouragement to worthy Patriots to review, and proſecute ſuch former good Bills, which have been overthrown, by a prevailing party, or *le Roy S'adviſera.* Perhaps it may not

Rot. P. 15. E. 3. 16.

Rot Parl. 22. E. 3. n. 4.

4 Inſt. 32

4 Inſt. 202. 203.

not be loſt time, to look into the Journals, and conſult the Members of King *Charles* the ſecond's Parliaments, to find ont by what methods the *Teſts* and *Habeas Corpus* Acts were carryed. Tho this by the way muſt be remembred, that notwithſtanding the many Miſcarriages in that King's time, he thought himſelf no where better counſelled then in Parliament, and therefore, whatever Bills were preſented to him by both Houſes, he paſt them, *without adviſing further, or ſtaying till the neceſſity of Affairs oblig'd him to it.* But on the whole, I am certain, you'l obſerve that the moſt effectual way you can take for gathering ſuch good Fruit, is by grafting on Subſidy Stocks.

I come now to the Redreſs of Grievances, which is generally look'd after in Parliament, and taken care of before any Money Bills are paſs'd. For one of the principal ends of calling of Parliaments, is for the redreſs of Grievances, that daily happen. And this, in former days, was ſo well known, that when Writs have been iſſued out for ſummoning a Parliament, our Kings have likewiſe ſent their Writs to the Sheriffs of the ſeveral Counties in *England*, to ſummon all Perſons to give in their Complaints of Grievances againſt the Miniſters of State, and other great Officers of the Realm. And the Houſe of Commons being the general *Inquiſitors of the Nation*, have uſually taken care to impeach ſuch Perſons at Court, as have given ill advice, or mismanag'd the King's affairs. And where the nature of the Crimes, or the proof of them could not well bear Impeachment, the Commons have made Complaints to the King, and *on their bare Suggeſtion of Crimes*, in Perſons, about the King, the accuſed have uſually been remov'd. The Parliament Rolls give you many Inſtances, of which I ſhall beg leave to mind you of ſome few. In the 29 of *H.* 6. the Commons prayed the King, that the Duke of *Somerſet*, and about thirty more, be abandon'd from the King's preſence, during their Lives, and not to come within twelve Miles of the Court; *for that People ſpeak evil of them.* The King in anſwer, granted that they ſhould all (ſome few excepted) depart, and ſo continue for one Year to ſee if any man could duly accuſe them. And in the 5 of *H.* 4. At the requeſt of the Commons, the Lords accorded, that the King's Confeſſor, the Abbot of *Dore*, and two others there named, ſhould be remov'd out of the King's Houſe. The Confeſſor and the two others, afterwards, came into Parliament, before the King and the Lords, where the King excus'd them, ſaying, that he knew no cauſe wherefore they ſhould be remov'd, but only, *for that they were hated by the People*; and therefore *charg'd them to depart from his*

Inſt 11. *ir. juſtice* . 1. *p.* 9. *Petyts pre- ace to the ights of Commons.* .40. *Stat.* 36. *E.* 3. *c.* 10. 17 *E.* 2. *Horſo m.* 2. *Clauſ* 4 *E.* 3. *m.* 18. *Horſo.*

Rot. Parl. 29 H. 6. *n.* 16.

Rot. Parl. 5 H. 4. *n.* 16.

his House, according to the agreement, and the like he would have pronounced againſt the Abbot, if he had been preſent. And the King moreover ſaid, *He would do the like with any other, that was about his Royal Perſon, if he were in the Hatred and Indignation of the People.*

I ſhall conclude with one more Record, in *Edward* the third's time, where an Aid being demanded for defending the Seas, and maintaining the War againſt his Enemies. Their anſwer is, (after their Proteſtation of their Allegiance to the King) That if the King had *faithful Counſellers and Officers*, he could not but have been the *richeſt Prince in Europe*. And therefore they require that Falſhoods and Crafts of certain of the King's Council, and other Perſons may be try'd, and puniſht; which would long maintain his Wars, without any charge to the Commons. And thereupon *Richard Lyens*, Merchant, ſometimes Farmer of the King's Cuſtoms, and Treaſurer or Receiver of his Subſidies (for combining with the King's Creditors, to have part of their Gain, and likewiſe for *buying of the King's Debts at under rates, and making the King pay the whole Sum*, and for taking *Brocage, for obtaining Payment to the King's Creditors*, of the Moneys owing to them) he was ſentenced, as to his Body, Lands and Goods, to be at the King's pleaſure. And at the ſame Parliament for the like Offences, was the Lord *Nevil*, beſides the Criminal Puniſhments, ordered to *make Reſtitution to the Parties from whom he had taken Brocage*. And ſo they proceeded, as other Parliaments have done, to the Tryal and Condemnation of Offenders, before they would conſider of a Subſidy, and thereby warded off a heavy Tax from the People.

Rot. P. 50. E. n. 15. E. 26. 35.

By Fin & Forf tures.

Rot. Pa E. 5. n.

I thought fit at this time to preſent to the Publick, only this ſhort Collection out of our Statutes, Parliament Rolls, and Law-Books: but a kind Reception of this may encourage me to proceed further for the benefit of my Country-men.

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